

NOT DESIGNATED FOR PUBLICATION
DIVISION III

CA06-1387

MAY 23, 2007

CAROL LUELLEN

APPELLANT

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[NO. F502901]

V.

WAL-MART ASSOCIATES, INC. and
CLAIMS MANAGEMENT, INC.

APPELLEES

AFFIRMED

Carol Luellen appeals a decision of the Workers' Compensation Commission denying her claim for an alleged injury that occurred on March 11, 2005 and for subsequent spinal surgery. The incident leading to her claim occurred when, as Luellen knelt to tape a torn bag of dog food, a forklift driver set a loaded pallet beside her and bags were dumped onto her. On appeal Luellen challenges the Commission's findings that an injury to her lumbar spine was not compensable and that she was not entitled to the surgery. Wal-Mart responds that substantial evidence supports the findings that Luellen did not sustain a compensable injury and that her surgery was not a reasonable or necessary result of the accident. We affirm the Commission's denial of the claim.

We will not reverse a decision of the Commission unless we are convinced that fair-minded persons with the same facts before them could not have reached the Commission's

conclusions. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). It is well-established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Commission. *Id.* If the Commission has denied a claim because of the claimant's failure to meet his or her burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Ark. Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979).

Luellen received conservative treatment for soft-tissue strain upon Wal-Mart's initial acceptance of the claim and acknowledgment of the incident. An MRI was performed two months after the incident, and orthopedic surgeon Dr. Tony Raben recommended surgery for a herniated disc at L5-S1. Wal-Mart later denied coverage for the surgery, and it contended that evaluation and diagnostic testing had failed to reveal any objective measurable findings or to substantiate the existence of a strain. Because of Wal-Mart's refusal of coverage, Luellen proceeded with the surgery under a policy of health insurance.

At a hearing before the administrative law judge on October 25, 2005, the contested issues were the compensability of Luellen's claim and her entitlement to related medical treatment. Wal-Mart contended that the lumbar spine injury was unsupported by objective findings. The law judge found that Luellen's injury was compensable and that her subsequent surgery was reasonable and necessary for the injury. The Commission, reversing the award, denied and dismissed Luellen's claim. Luellen now appeals the Commission's decision.

The Commission noted inconsistencies in the medical history that Luellen gave her doctors about pain in her low back and right leg, and it found her testimony to be “contradictory, inconsistent, and totally unreliable.” Reviewing the medical evidence, the Commission explained:

The initial x-ray taken of the claimant’s lumbar spine on April 20, 2005, noted osteoarthritis in the claimant’s lower back. Additionally, the MRI performed on May 19, 2005, showed “annular disc bulging identified at L2-3, L3-4, L4-5 compatible with chronic mild degenerative changes.” Also noted on the MRI film was “moderate degenerative facet arthropathy at each level, with fluid in several facet joints again compatible with chronic degenerative facet arthropathy.”

The Commission discussed conflicting medical evidence with respect to the description of the disc at L5-S1 as revealed through the MRI, and it noted its authority to determine credibility and weight to be given testimony. The conclusion of the Commission was as follows:

Based upon all of the above, we find that the claimant has failed to meet her burden of proving by a preponderance of the credible evidence, and more specifically through objective measurable findings, that she sustained a compensable accidental injury to her lumbar spine in the incident of March 11, 2005.

Luellen first points to evidence going to the element of causation. She disputes the Commission’s determination that she showed no objective findings to relate her low back injury to an accident in which “she was pummeled by 1200 pounds of dog food bags.” She points to various evidence in the medical records, and she notes that she was prescribed medications that are used to treat muscle spasm and inflammation. She asserts that a bulging disc at L5-S1, revealed by an MRI performed two months after her injury, was “obviously an

objective finding” out of her control. She maintains that her herniated disc resulted from a specific incident at work and that surgery “is not done for degenerative disc disease.”

To prove a compensable injury, the burden is on the claimant to show, among other things, that a causal connection exists between the injury and employment. *Horticare Landscape Mgmt. v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002). The statutory requirement that “[a] compensable injury must be established by medical evidence supported by ‘objective findings’” applies only to the existence and extent of the injury. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2005); *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997). Where objective medical evidence establishes the existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relationship between the injury and the work-related accident, objective medical evidence is not essential to establish the causal relationship. *Ward v. Hickory Springs Mfg. Co.*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 31, 2007).

Although there was objective medical evidence establishing that Luellen had a back problem, the Commission found that her back injury was caused by degenerative disc disease. The Commission also found that Luellen failed to present credible evidence and objective measurable findings that she sustained an injury on March 11, 2005. It was up to the Commission to weigh the evidence, including medical evidence, and to determine the credibility of testimony. We hold that substantial evidence supports the findings of the Commission, particularly that her injury was caused by degenerative disc disease rather than

by the work-related accident when the bags of dog food fell on her. Thus, the Commission's decision displays a substantial basis for the denial of the claim.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.